**HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

**WRIT PETITION Nos.7730 & 8559 of 2007**

*% 04-07-2007*

Between:

Fishermen Cooperative Society, Nutchupoda & others

…Petitioners

and

The Commissioner of Fisheries,
Department of Fisheries, Matsya Bhavan,
Hyderabad & others

…Respondents

! Counsel for the Petitioners : Smt.Vidyavathi &
Sri Narasimha Rao

^ Counsel for Respondents : The G.P. for Fisheries &
Sri G.Peddababu

<Gist :

>Head Note :

? Citations:

1. AIR 1994 AP 357
2. 1967(2) ANDHRA WEEKLY REPORTER 26

**HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

**WRIT PETITION Nos.7730 & 8559 of 2007**

**Dated 4th July 2007**

Between:

Fishermen Cooperative Society, Nutchupoda

…Petitioner

and

The Commissioner of Fisheries,
Department of Fisheries, Matsya Bhavan,
Hyderabad & others

…Respondents

**HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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**O R D E R:**

These two writ petitions are filed, challenging the proceedings, dated 11.4.2007, through which the Commissioner of Fisheries/Ex-officio Registrar of Cooperative Societies, the 1st respondent herein, appointed an official person-in-charge, to look after the affairs of Fishermen Cooperative Society, Nutchupoda (for short "the society"). While W.P.No.7730 of 2007 is filed by the society, W.P.No.8559 of 2007 is filed by the Vice-Chairman and Secretary. The respondents are common to both the writ petitions.

The term of the Managing Committee of the society was to expire on 30.3.2007. It is stated that the outgoing committee conducted elections on 6.3.2007, and a new committee, comprising of a President and 8 Directors was elected. It is also alleged that the committee so elected, has assumed charge on 9.3.2007. These developments are said to have been informed to the Assistant Director of Fisheries, Ongole, and to other authorities, through the District Collector. Through the impugned proceedings, the

1st respondent appointed official person-in-charge to the committee. It was stated that the society is in receipt of government aid, and in that view of the matter, elections, as contemplated under Rule 22-B of the A.P. Cooperative Societies Rules, 1964 (for short "the Rules"), ought to have been held. In effect, the proceedings ignored the election conducted on 6.3.2007.

The petitioners contend that once elections, in accordance with the provisions of the Act and the Rules, were held, it is not open to the 1st respondent, to appoint an official person-in-charge. They submit that in case, any one is aggrieved by the election, he has to file an election petition, and if respondents 1 to 3 want to take any punitive action, such as supersession of the committee, they have to follow the procedure, and till such time, the question of appointing a person-in-charge, does not arise.

The Assistant Director of Fisheries, filed a counter affidavit, supporting the impugned order. He made reference to Section 43 of the A.P. Cooperative Societies Act, 1964 (for short "the Act"), to contend that the society is in receipt of financial aid. According to respondents 1 to 3, elections, as contemplated under Rule 22 of the Rules, ought to have been held, and the so-called election said to have been conducted by the outgoing committee, has no legal sanctity.

Respondents 4 to 6 got themselves impleaded in the writ petitions. According to them, there is no valid election to the Managing Committee of the society, and the attempt of the petitioners is nothing but an unlawful usurpation into the management of the society.

Smt.Vidyavathi and Sri Narasimha Rao, learned counsel for the

petitioners, submit that the society is not in receipt of any financial aid from the Government, and as such, it was competent for the outgoing Managing Committee, to conduct elections, as provided for under Rule 22(1)(a) of the Rules. They submit that the question of appointing person-in-charge would arise, if only there did not exist any elected committee, and the impugned order cannot be sustained in law.

Learned Government Pleader for Fisheries and Sri G.Peddababu, learned counsel for the respondents 4 to 6, submit that the so-called election held on 6.3.2007, is void *ab initio,* and is without any legal effect. They submit that the society is in receipt of aid and subsidy, and in that view of the matter, elections must be held, only through a notification issued by the Election Authority, and not otherwise.

Under Section 32 (7) of the Act, the Government or the Registrar, as the case may be, are conferred with the power to appoint a person or persons-in-charge, to manage the affairs of the society for a period, not exceeding six months. This power can be exercised, only when a committee does not exist for a society, or in the opinion of the Government or the Registrar, it is not possible to call for a General Body meeting, to conduct elections for the committee.

In the instant case, the term of the committee expired on 30.3.2007. According to the petitioners, the outgoing committee conducted elections on 6.3.2007, and the committee that was elected on that day, had assumed office on 9.3.2007. A perusal of the impugned order, dated 11.4.2007, discloses that respondents 1 to 3 did not recognize the election. In the first paragraph of the proceedings, it was observed that the election to the Managing Committee of the society could not be held, on account of

the allegations of irregularity, in the matter of admission of members. It was also pointed out that the society is in receipt of aid, thereby the procedure prescribed under Rule 22(b), for conducting elections, gets attracted. The occasion to make a reference to these facts in the impugned proceedings arose, in the light of an election, conducted by the outgoing committee. In case, the respondents were of the view that the election conducted on 6.3.2007 cannot be sustained in law, necessary proceedings in the direction of annulling that election, ought to have been initiated. If any members of the society were aggrieved by the said election, they ought to have moved the Tribunal. Appointment of a person-in-charge, simply by ignoring the election, which has already taken place, cannot be sustained in law.

There is another factor, which weighs with this court, to accept the contention of the petitioners. Even according to the respondents, the term of the Managing Committee of the society expired on 30.3.2007. The Act and Rules mandate that elections must be conducted, before the expiry of the term of an existing committee. In case, the conducting of elections becomes not feasible, steps under Section 32 of the Act must be taken forthwith, by ensuring that soon after the expiry of the term, the management is entrusted to the person-in-charge. The emphasis under the Act and the Rules is that a society must not be left without any agency to manage it, whether in the form of an elected committee, or a person-in-charge. If respondents 1 to 3 were genuinely concerned about the management of the society, they were expected to appoint a person-in-charge, by 30.3.2007. They swung into action only on 11.4.2007, at the instance of some individuals. It is not explained as to how the society was left, without any management, between 30.3.2007 and 11.4.2007.

In W.P.No.4364 of 2007, a question, which is similar in nature, arose. There also, the outgoing committee conducted elections and a committee was appointed. To verify the genuinety of the same, the Fisheries Development Officer issued a notice to convene a general body meeting. Through its order, dated 2.12.2006, this court held that such a course is impermissible. It was also observed that once a committee had been elected, its validity can be examined, only in accordance with the prescribed procedure, and not otherwise.

In ***AWARI DEVANNA v. DIVISIONAL CO-OPERATIVE OFFICER***[1], it was held that even if the Act and the Rules are silent, as regards any situation, the tenure of an elected committee can be ousted, only after following the principles of natural justice.

On behalf of respondents 4 to 6, reliance is placed upon the judgment of this Court in ***B.RAJAGOPALA RAO v. REGISTRAR OF COOPERATIVE SOCIEITES***[2]. The subject matter of the writ petition was the validity of election of the members of the Managing Committee of Amudalavalasa Cooperative Agricultural Society. Series of writ petitions came to be filed in respect of the same. The elections were to have taken place on 30.5.1966. However, through an interim order dated 27.5.1966, this court directed postponement of elections, by three weeks. On 30.5.1966 when arrangements were otherwise ready for election, the

officer-in-charge brought the order of stay granted by this court, to the notice of the members. However, an unruly crowd conducted elections, on its own accord, by preventing the officer-in-charge, and 10 persons were declared elected in the elections so conducted. When the validity of such an election was in question, it was alleged

that the aggrieved parties have to approach the court, by way of an election petition.

Repelling this contention, it was held that the election conducted on 30.5.1966 was *non-est* in law, and no rights would flow from it. That situation cannot be compared with the one, in the present case. Even according to the respondents, the area of controversy is very limited. If the society is in receipt of financial aid, elections were required to be conducted with the appointment of an election officer. On the other hand, if the society did not receive any aid, it was competent for the outgoing Managing Committee, to hold elections, and no illegality can be attributed to the committee elected, in the process. Therefore, the crucial question, which had a direct bearing upon the entire issue, *viz*., whether the society is in receipt of financial aid; ought to have been decided, only after giving an opportunity to the society. Viewed from any angle, the impugned order cannot be sustained.

For the foregoing reasons, the writ petitions are allowed, and the impugned proceedings are set aside. If the respondents intend to assail the validity of the elections held on 6.3.2007, it shall be open to them, to take necessary steps, as provided for under the A.P. Cooperative Societies Act and the Rules made thereunder. There shall be no order as to costs.

**(L.NARASIMHA REDDY, J)**

**Dt.4th July 2007**
*L.R.copies be marked.*
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[1] AIR 1994 AP 357

[2] 1967(2) ANDHRA WEEKLY REPORTER 26